

absence of a precise statutory definition of what constitutes an abortion. While the abandoned child provisions of House Bill 1065 reflect a view that many or most decisions to have an abortion are based upon the view of the parent or parents that they do not want the child, that is certainly not always the case. Many operations or procedures which all would agree constitute an abortion are undertaken because of a desire to protect or safeguard the health and well-being of the mother and not to prevent the birth of the child. It may well be that operations will be performed which would not be called abortions by everyone familiar with the term and which a particular attending physician may not consider to constitute an abortion but which are later determined by a court to fall within the term, thus triggering the abandoned child provisions of the bill. The existing Maryland statutes, as well as many statutes of other states including some which have been before the Supreme Court, do not provide a precise and clear-cut definition of the term. Sections 138 and 139 of Article 43 simply refer to the "termination of human pregnancy" while Section 137(a) refers to the "termination of a human pregnancy otherwise than by birth". Literal application of the Section 137(a) definition to the abandoned child provision of House Bill 1065 arguably makes no sense since the latter only becomes operative if the fetus is born alive. While the absence of a precise statutory definition of the term "abortion" has not been fatal to any statutes heretofore considered by the Supreme Court, and while the meaning of the term may be sufficiently well established in the medical profession so as to resolve any possible ambiguities of constitutional dimension, we believe that you should be aware of the absence of a specific statutory definition in your consideration of House Bill 1065.

Neither the Supreme Court nor, to our knowledge, any other court has considered a statute presenting the precise issues raised by subsection (b) of this bill. In considering the facial constitutionality of the rebuttable presumption created by the bill, we assume that the State has a legitimate interest in creating this presumption and that the method chosen by the bill to deal with the situation is reasonable and necessary to protect the health and well-being of the fetus and of society. While we cannot be certain of all of the interests which the General Assembly perceived as being furthered by the bill, it does appear that the bill is prompted by a desire to resolve as promptly as possible the status of a child who one might expect is not wanted by his or her parents so as to minimize the presence of lingering questions as to the responsibility for making decisions relative to the welfare of the child, and in particular any necessary medical decisions in connection with the care and treatment of the child. Insofar as